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T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

In re:

METROPOLITAN MORTGAGE &
SECURITIES CO., INC.,

Debtor.

Jointly Administered Under
No. 04-00757-W11

In re:

SUMMIT SECURITIES, INC.,

Debtor.

METROPOLITAN INVESTMENT
SECURITIES, INC.,

Debtor.

No. 04-00756-W1B

METROPOLITAN MORTGAGE &
SECURITIES CO., INC., SUMMIT
SECURITIES, INC., and BRUCE
BOYDEN, as Trustee for the
Chapter 7 estate of
METROPOLITAN INVESTMENT
SECURITIES, INC.,

Plaintiffs,

vs.

KEITH CAUVEL and MARJORIE
CAUVEL, husband and wife,
et al.,

Defendants.

Adversary No. A04-00061-W11

MEMORANDUM DECISION RE:

HALL DEFENDANTS/SCOTT LAW GROUP
CREDITORS' MOTION FOR
RECONSIDERATION OF COURT'S
ORDER GRANTING PLAINTIFFS' AND
INTERVENING PLAINTIFFS' MOTION
FOR DECLARATORY JUDGMENT OR
PRELIMINARY INJUNCTION (#237)

THIS MATTER comes before the Court on Hall Defendants/Scott
Law Group Creditors' Motion for Reconsideration of Court's Order

MEMORANDUM DECISION RE: . . . - 1

1 Granting Plaintiffs' and Intervening Plaintiffs' Motion for
2 Declaratory Judgment or Preliminary Injunction (Docket No. 237) and
3 Joinder in Hall Defendants' Motion for Reconsideration by Banks
4 Defendants (Docket No. 268).

5 Motions for reconsideration are governed by Fed. R. Bank. P.
6 9023 which incorporates by reference Fed. R. Civ. P. 59. Motions
7 for reconsideration are granted only if there has been a change in
8 the law or facts or there is newly discovered evidence. *In re*
9 *Basham*, 208 B.R. 926 (B.A.P. 9th Cir. 1997). Motions under Fed. R.
10 Civ. P. 59 serve to correct manifest errors of law or fact, or to
11 consider the import of newly discovered evidence. They are not to
12 be used by a losing party who failed to raise an available argument
13 or who disagrees with the Court's prior decision. *In re Kellogg*,
14 197 F.3d 1116 (11th Cir. 1999).

15 Neither Hall Defendants' Motion nor Banks Defendants' Joinder
16 assert newly discovered evidence as a basis for reconsideration.
17 Rather, Hall Defendants' Motion argues that the Court lacked a
18 factual basis for concluding that the claims asserted against
19 either debtor are covered by the Professional Liability Policy and
20 its excess policy. Specifically, Hall Defendants argue that the
21 court erred in determining that the debtors were entitled to the
22 policy proceeds because the Court lacked a factual basis from which
23 to conclude that the debtors had a legal interest in the policy
24 proceeds.


25 11 U.S.C. § 541(a)(1) of the Bankruptcy Code defines property
26 of the estate as "all legal and equitable interests of the debtor
27 in property as of the commencement of the case." Property of the
28 estate is to be interpreted broadly. *United States v. Whiting*

1 Pools, Inc., 462 U.S. 198 (1983). When dealing with policies of
2 insurance, a fundamental distinction exists between first-party
3 policies of indemnification and policies of liability. In this
4 case, the debtors allege that they hold first-party not third-party
5 claims against the insurance proceeds. See Declaration of Bruce R.
6 Boyden in Support of Debtor's Motion for Declaratory Judgment or
7 Preliminary Injunction (Docket No. 198). This Court did not
8 conclude as a matter of law that the debtors had a legal interest
9 in the policy proceeds. The Court concluded that the debtors had
10 an equitable or beneficial interest in the policy proceeds as the
11 debtors had filed claims against those proceeds and that equitable
12 interest was sufficient to render the policy proceeds property of
13 the estate. In other words, this Court concluded that under these
14 circumstances an insured debtor on a liability policy has an
15 equitable interest in the proceeds. The beneficial or equitable
16 interest arises not only from the secondary effect that the payment
17 of the insurance proceeds has on the remaining claims against the
18 estate, but most importantly, from the debtors' alleged direct
19 right to recover from the proceeds.

20 It is this Court's opinion that it had a sufficient factual
21 basis for its conclusions that the debtors had alleged claims
22 against the policies. The Order Re: Plaintiffs' and Intervening
23 Plaintiffs' Motion for Preliminary Injunction (Docket No. 225) does
24 not adjudicate any question of coverage under the policies. The
25 arguments asserted in the Motion and Banks' Joinder to the extent
26 previously argued, were either explicitly or implicitly rejected in
27 the Court's prior Order. Arguments that could have been asserted
28 or which are asserted for the first time in a motion for

1 reconsideration are waived. *Beech Aircraft Corp. v. United States*,
2 51 F.3d 834 (9th Cir. 1995).

3 DATED this 31st day of August, 2005.

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6 PATRICIA C. WILLIAMS
7 Bankruptcy Judge
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